

# Attachment 1

1 THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

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4 IN RE: NATIONAL :  
PRESCRIPTION OPIATE : MDL NO. 2804  
5 LITIGATION :

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6 : CASE NO.  
THIS DOCUMENT : 1:17-MD-2804  
7 RELATES TO ALL CASES: Hon. Dan A. Polster

8 - - -

9 Thursday, April 25, 2019

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11 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
12 CONFIDENTIALITY REVIEW

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14 Videotaped deposition of DAVID A.  
15 KESSLER, M.D. (Day 1), taken pursuant to  
16 notice, was held at Baron & Budd, 600 New  
17 Hampshire Avenue NW, Floor G, Washington, DC  
18 20037, beginning at 9:28 a.m., on the above  
19 date, before Lisa V. Feissner, RDR, CRR, Notary  
20 Public.

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23 GOLKOW LITIGATION SERVICES  
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24 deps@golkow.com

1 Q. And the errata sheet, which I'll  
2 mark as Exhibit 3, is that something you did?  
3 You went through your report and decided what  
4 needed to be fixed?

5 MR. RAFFERTY: Object to form.

6 A. In some instances, yes. Much of  
7 this is typographicals. What I did ask for --  
8 again, I'm going to say with the assistance of  
9 counsel --

10 THE WITNESS: And you're going to  
11 say, stop.

12 A. But with the assistance of counsel,  
13 I asked for cite checking. And sometimes when  
14 people do cite checking, you find certain  
15 mistakes in quotes. When I asked for things to  
16 be highlighted, things get identified as  
17 mistakes that are in the report. So I did ask  
18 for people to keep track when they  
19 cite-checked.

20 (Exhibit Kessler-3 marked for  
21 identification and attached to the  
22 transcript.)

23 BY MS. FREIWALD:

24 Q. Before issuing your report in this

1 case focused on six manufacturers, did you do  
2 anything to investigate the full scope of  
3 mistakes or missed opportunities by any number  
4 of other entities?

5 MR. RAFFERTY: Object to the form,  
6 vague.

7 A. It's a broad question. Can you be  
8 a little more specific?

9 Q. I meant it to be a broad question.

10 MR. RAFFERTY: Object to the form.  
11 You can answer it if you understand  
12 what she's asking.

13 THE WITNESS: Well, I think I  
14 understand what she's --

15 A. I certainly gave a good -- a good  
16 deal of thought to FDA's role in this. We  
17 discussed that initially. So I did that. I  
18 tried to gain an understanding of -- even  
19 though I'm not -- if there's any distributor in  
20 the room, I'm not -- I have no opinions on  
21 distributors. You can go take the day off.

22 I try to have some understanding of  
23 DEA's role. The database has distributor  
24 information. I certainly looked at -- for

1 example, there are documents from the counties  
2 on the database. Looked at those.

3 So I looked at a broad range of  
4 documents. The scope of the question that I  
5 was asked, though, was the manufacturer, so  
6 I -- but certainly I think I have some  
7 understanding with regard to FDA, certainly  
8 with regard to HHS, a limited fashion with  
9 regard to how FDA and DEA interacts on  
10 legitimate medical need.

11 Q. Did you -- did you look --

12 MR. RAFFERTY: Are you finished  
13 with your answer, Doctor? That was a  
14 vague question.

15 You said you meant it to be broad  
16 and vague.

17 A. But I will say that I tried in the  
18 report to focus on the question that I was  
19 asked, which focused on the manufacturers. But  
20 I -- but I did put it in the context -- the  
21 broader context, yes.

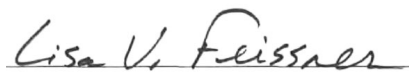
22 Q. Were you asked to focus  
23 specifically on six manufacturers?

24 A. I believe that was the -- yes. I

C E R T I F I C A T E

I, Lisa V. Feissner, RDR, CRR, CLR,  
Notary Public, certify that the foregoing is a  
true and accurate transcript of the deposition  
of said witness, who was first duly sworn by me  
on the date and place hereinbefore set forth.

I further certify that I am neither  
attorney nor counsel for, nor related to or  
employed by, any of the parties to the action  
in which this deposition was taken, and  
further, that I am not a relative or employee  
of any attorney or counsel employed in this  
action, nor am I financially interested in this  
case.



Lisa V. Feissner, RDR, CRR, CLR

Notary Public

Dated: APRIL 29, 2019

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